Supreme Court, U.S.
FILED

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

ARMANDO C deBACA,

Petitioner,

v.

THE STATE OF COLORADO,

Respondent.

On Petition for Writ of Certiorari
to the Colorado Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I.

Was sufficient constitutional notice provided to Respondent that he would be held to the standards of the Rules of Professional Conduct after his suspension from the practice of law on December 15, 1993?

II.

Was application of the Rules of Professional Conduct to conduct of Respondent that post-dated his suspension from the practice of law on December 15, 1993 constitutionally infirm?

PARTIES TO THE PROCEEDING

ARMANDO C deBACA,

Petitioner,

v.

THE STATE OF COLORADO,

Respondent.

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Petitioner, Armando C deBaca, respectfully requests that a writ of certiorari be issued to review the order of disbarment issued by the Colorado Supreme Court.

OPINION BELOW

The opinion of the Colorado Supreme Court is reported as *In the Matter of Armando C deBaca*, 11 P.3d 426 (Colo. 2000). The opinion is contained in Appendix A. A petition for rehearing was filed and denied. The order denying the petition is contained in Appendix B.

STATEMENT OF JURISDICTION

The order of the Colorado Supreme Court was entered on September 11, 2000. The order denying the petition for rehearing was issued on October 23, 2000.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

There are no statutory provisions involved per se in this petition. Involved in this case is the ruling of the Colorado Supreme Court interpreting various provisions of the Rules of Professional Conduct and the Colorado Rules of Civil Procedure as they relate to regulation of attorneys within the State of Colorado.

STATEMENT OF THE CASE

A. Background of Material Facts:

Petitioner Armando C deBaca (Petitioner) was admitted to the practice of law in the State of Colorado in 1975. He

practiced law in Denver, Colorado until December 15, 1993. On that date, the Colorado Supreme Court entered an order suspending him from the practice of law for at least ninety days. *People v. C deBaca*, 862 P.2d 273 (Colo. 1993). That order of suspension required that Petitioner formally seek reinstatement. *Id.* at p. 275. Reinstatement would only be granted if the Colorado Supreme Court found by clear and convincing evidence that Petitioner had been rehabilitated, had complied with all applicable disciplinary orders, and was fit to practice law. Colo. Rule of Civil Proc. 241.22(b). Petitioner did not seek reinstatement from that order of suspension.

Petitioner wrapped up his practice of law in 1993 and notified all clients of his suspension. No allegations have ever been made that Petitioner was involved in the unauthorized practice of law after December 15, 1993.

In 1995, another disciplinary proceeding was commenced against Petitioner. The proceeding dealt with conduct that had occurred prior to December 15, 1993 when Petitioner was still licensed to practice law. This proceeding lead to an additional two-year period of suspension. *People v. C deBaca*, 948 P.2d 1 (Colo. 1997). This period of suspension did not end automatically but also required that Petitioner file a petition for reinstatement with the Colorado Supreme Court. In addition, Petitioner was required to make restitution to an individual complainant in the amount of $300.00.

A third disciplinary proceeding was commenced in 1997 against Petitioner. A formal complaint in discipline was filed in 1998, and a hearing was held on June 25-26, 1998 before a hearing board of the Colorado Supreme Court. That hearing board heard evidence and then issued a recommendation that Petitioner be disbarred. Petitioner filed exceptions to the recommendation, along with briefs raising initial and then supplemental issues. Two of those issues are raised in this

Petition.

After consideration of the briefs, the Colorado Supreme Court issued its order of disbarment on September 11, 2000. *In the Matter of C de Baca*, 11 P.3d 426 (Colo. 2000). A petition for rehearing was filed with the Colorado Supreme Court and denied on October 23, 2000.

The disciplinary complaint at issue in this case alleged that Petitioner had engaged in dishonest conduct toward Ms. Augustina Yanez. The allegation against Petitioner was that he had accepted an interest in property in Denver that belonged, in part, to Ms. Yanez. The former husband of Ms. Yanez had been a client of Petitioner, and the domestic court had ordered the property sold and the proceeds divided between the ex-husband and ex-wife. The property was never transferred into a tenancy in common. In 1990, the ex-husband was charged in a criminal case in Oklahoma and wanted to deed his interest in the property to his criminal attorney in Oklahoma. Petitioner was contacted by the ex-husband concerning the transfer of the property to the criminal attorney. Petitioner was owed fees from previous work for the ex-husband and requested payment. After checking the property records, Petitioner determined that the ex-husband was the sole legal owner of the property. The ex-husband agreed to transfer the property to the criminal attorney and Petitioner.

Later proceeds from an environmental class action were distributed to owners of the property, and the ex-wife did not receive any of the proceeds. The ex-wife ultimately sued Petitioner and her ex-husband's Oklahoma criminal attorney in a state district court in Denver and judgment was entered quieting title in the name of the ex-wife. No money judgment was entered against Petitioner, as the state district judge found that Petitioner had not profited from any ownership interest in the building. He had had to pay individually for repairs,

upkeep, and taxes for several years.

The ex-wife and her attorney filed a grievance that eventually became the formal complaint that lead to Petitioner's disbarment. The Colorado Supreme Court noted that the allegations against Petitioner did not involve the practice of law. *Id.* at p. 429.

B. The Proceedings Below:

The process which began against Petitioner was pursuant to the disciplinary system for lawyers that was in place at that time. See *Id* at p. 426, fn.1. A formal disciplinary proceeding was commenced by the filing of a formal complaint and referral to a hearing panel of the Grievance Committee of the Colorado Supreme Court. That occurred in this case, and the formal hearing on June 25-26, 1998 was for the presentation of evidence and testimony. The hearing panel then issued written findings of fact and a recommendation that was submitted to the Colorado Supreme Court. Petitioner had the right to and did submit exceptions, as well as raising legal issues for consideration by the Colorado Supreme Court. The recommendation was not binding on the Colorado Supreme Court, though the findings of fact were, if supported by the evidence. The Colorado Supreme Court entered its order of disbarment on September 11, 2000. *Id.* The motion for rehearing was denied on October 23, 2000.

REASONS FOR GRANTING THE WRIT

I.

THE WRIT SHOULD BE GRANTED BECAUSE PETITIONER DID NOT RECEIVE SUFFICIENT CONSTITUTIONAL NOTICE THAT THE RULES OF PROFESSIONAL CONDUCT WOULD APPLY TO HIM AFTER HIS SUSPENSION ON DECEMBER 15, 1993.

This Court held in *In Re Ruffalo*, 390 U.S. 544 (1968) that an attorney is entitled to due process and notice in disciplinary proceedings. In that case, an attorney was facing disciplinary charges that had been presented to him in writing. At the hearing held on the disciplinary charges, the attorney testified in his own defense. After that testimony, the disciplinary prosecutor amended the charges based upon the lawyer's testimony. This Court noted, in part:

> In the present case petitioner had no notice that his employment of Orlando would be considered a disbarment offense until after he and Orlando had testified at length on all the material facts pertaining to this phase of the case....
>
> These are adversary proceedings of a quasi-criminal nature. (Citation omitted). The charge must be known before the proceedings commence. They become a trap when after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh.
>
> How the charge would have been met had it been originally included in those leveled against petitioner by the Ohio Board of Commissioners on

> Grievances and Discipline no one knows.
>
> This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived petitioner of procedural due process.

Id. at pp.550-551. After the testimony of the lawyer, the disciplinary prosecutor amended the charges to include an allegation that the lawyer had hired an agent to solicit cases for him. This Court held that Ruffalo had not received proper notice or due process of law in the action brought against him, as there was no original charge that he solicited cases through an agent.

In this case, the lack of notice is even more basic. When Petitioner was suspended by the Colorado Supreme Court on December 15, 1993, he was directed to formally seek reinstatement through the filing of a petition with that court. Reinstatement required that Petitioner convince the Colorado Supreme Court by clear and convincing evidence that he had been rehabilitated and that he was fit to practice law.

The order did not provide that Petitioner was to be governed in his private life while on suspension by the Rules of Professional Conduct which were adopted by the Colorado Supreme Court and made effective on January 1, 1993. *In the Matter of C deBaca,* 11 P.3d at 429. He was precluded from practicing law or holding himself out as a lawyer. There was no termination date on the suspension, and Petitioner never sought reinstatement from this suspension.

The second suspension order issued by the Colorado Supreme Court noted that Petitioner had to convince the court "by clear and convincing evidence that he is once again fit to practice law." *People v. C de Baca,* 948 P.2d at 3. The court noted that Petitioner had not been reinstated and remained under suspension. The second suspension order did not provide notice

that Petitioner's conduct was to be governed by the Rules of Professional Conduct.

In dealing with this notice issue, the Colorado Supreme Court noted that "some of C de Baca's misconduct occurred after the December 1993 order of suspension and did not itself constitute the practice of law." *In the Matter of C de Baca*, 11 P.3d at 429. The court held that the Rules of Professional Conduct (Rules) still governed the conduct of a suspended lawyer. The court cited its decision in *People v. Dolan*, 873 P.2d 766 (Colo. 1994), a case which post-dated Petitioner's suspension. In *Dolan*, the suspended lawyer continued to practice law and failed to wind up his practice. The court commented in a footnote that *Dolan* stood for the general proposition that a lawyer could be subject to discipline for misconduct committed while on suspension. *In the Matter of C de Baca*, 11 P.3d at 429. The cited quote from *Dolan* was actually from a footnote in that case. *People v. Dolan*, 873 P.2d 766, FN1 (Colo. 1994). *Dolan* and *People v. Stauffer*, 858 P.2d 694 (Colo. 1993), another case cited by the lower court, both involved suspended lawyers who continued to practice law after suspension and who were on suspension orders that would terminate without the need to seek reinstatement.

The Colorado Supreme Court deal with the specific constitutional issue of lack of notice, in part, as follows:

> C de Baca also argues that he was not given notice that he would be held to ethical standards after the effective date of his suspension, December 15, 1993. Thus, he asserts that to apply the Rules of Professional Conduct to his actions after that date violates due process. We disagree. As pointed out above, C de Baca retained his license to practice law following his 1993 suspension and C.R.C.P. 241.1(c) provided that after January 1, 1993,

lawyers' conduct was governed by the Rules of Professional Conduct. Moreover, C.R.C.P. 241.6, 12 C.R.S. (1998) (repealed and reenacted as C.R.C.P. 251.5) provided:

> Misconduct by a lawyer ..., including the following acts or omissions, shall constitute grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship:
>
> (1) Any act or omission which violates the provisions of the Code of Professional Responsibility or the Colorado Rules of Professional Conduct;
>
> (2) Any act or omission which violates accepted rules or standards of legal ethics;
>
> (3) Any act or omission which violates the highest standards of honesty, justice, or morality; ....
>
> This enumeration of acts and omissions constituting grounds for discipline is not exclusive, and other acts or omissions amounting to unprofessional conduct may constitute grounds for discipline.

(Emphasis added.) This Rule placed C de Baca on notice that his conduct after the effective date of his suspension would be judged against the Rules of Professional Conduct and "the highest standards of honesty, justice, and morality."

Furthermore, the amended complaint made it explicitly clear to C de Baca and to his attorney, that he was charged, in part, with ethical violations occurring after December 15, 1993. At no point in the proceedings, through the hearing and the filing of his opening brief in this court, did C de Baca raise a problem with the notice. We

> conclude that C de Baca, along with other suspended lawyers, had adequate notice that he was required to conform his conduct to the ethical standards of a lawyer.

Id. at 430-31. The problem with the analysis of the lower court was that it ignored the obvious. No where in the cited sections does it specifically state that it applies to any lawyer under suspension, let alone a lawyer who is on an indeterminate suspension. The exact language of the rule provides for "misconduct by a lawyer." Petitioner had ceased to be a lawyer on December 15, 1993, as it was improper for him to hold himself out as a lawyer after that date. Under both the 1993 and 1997 orders of suspension, it was probable that Petitioner would never be able to hold himself out as a lawyer again, as he would never be able to meet the threshold of convincing the Colorado Supreme Court by clear and convincing evidence that he was rehabilitated and fit to practice law.

In re Ruffalo made clear that the United States Constitution is applicable to lawyer disciplinary proceedings and that lawyers are entitled to due process and notice. The Colorado Supreme Court does not mention *Ruffalo* at all in its opinion. A lawyer who loses his license through suspension is entitled to basic notice that he or she will be governed by the Rules, even though they cannot hold themself out as a lawyer. Petitioner did not receive any notice that purely private conduct, which was conceded by the Colorado Supreme Court, would be subject to the Rules after an indefinite suspension. Petitioner did not receive constitutionally sufficient notice, and this Court should grant this Petition in order to review this issue.

II.

APPLICATION OF THE RULES OF PROFESSIONAL CONDUCT TO THE CONDUCT OF RESPONDENT THAT POST-DATED HIS SUSPENSION FROM THE PRACTICE OF LAW ON DECEMBER 15, 1993 WAS CONSTITUTIONALLY INFIRM.

Petitioner argued to the Colorado Supreme Court that post-suspension conduct was not covered by the Rules as written. In addition, application of the Rules to Petitioner after his suspension on December 15, 1993 was constitutionally improper.

The Colorado Supreme Court held that post-suspension conduct was governed by the Rules. When presented with the constitutional issue, the court did not discuss it.

> C de Baca next argues that it is unconstitutional to apply the Rules of Professional Conduct to him after the effective date of his suspension. This contention is predicated, however, on the assumption that he no longer possesses a license to practice law, a contention we have already rejected. We therefore also reject this contention.

In the Matter of C deBaca, 11 P.3d at 431. The court failed to grasp the real issue presented to it, choosing instead to hold that Petitioner still had a license to practice law, even though he had been suspended indefinitely.

This Court has held that the license to practice a

license cannot be taken without due process of law. *Barry v. Barchi*, 443 U.S. 55 (1979). In this case, there is a reverse denial of due process. Petitioner has never argued that he was denied due process of law in the 1993 and 1997 cases. He was placed on an indefinite suspension and directed to seek reinstatement, but only if he could convince the Colorado Supreme Court that he was fit to practice law. Until such time as he seeks reinstatement, he cannot practice law, cannot hold himself out as a lawyer, and cannot be considered an officer of the court. Petitioner was stripped of his license on December 15, 1993. To hold that his private dealings are subject to scrutiny under the Rules while on an indefinite suspension denies Petitioner his right of privacy and his right not to be held to a higher standard of conduct than the populace as a whole, of which he is a part. He certainly was not a part of the Bar of the State of Colorado when dealing with Ms. Yanez. As noted by the Colorado Supreme Court, Petitioner was not ordered to pay any monetary damages after a full civil trial. The Colorado Supreme Court's response was to hold that the trial court's findings "implied dishonesty." *Id.* at 431. As a private individual in the State of Colorado, Petitioner was absolved on any obligations to Ms. Yanez. While on an indefinite suspension, Petitioner was nothing more than a private individual.

There are few cases from other jurisdictions that deal with post-suspension conduct. The Oregon Supreme Court in *In re Complaint as to the Conduct of Hereford*, 756 P.2d 30 (Or. 1988) held that a lawyer could be disciplined for conduct that arose prior to a suspension. In *In re Chavez*, 1 P.3d 417 (N.M. 2000), the New Mexico Supreme Court had included in the order of a finite suspension that the lawyer would be governed by the Rules. In *Disciplinary Proceedings Against Mandelman*, 182 Wis.2d 583, 514 N.W..2d 11 (1994), the Wisconsin Supreme Court held that post-suspension conduct is relevant for consideration when reinstatement is sought, but not for purposes of disbarment.

Once a jurisdiction takes a property right from an individual and does so with due process, it cannot hold that individual to a standard of the profession of which he or she is no longer a part. It is constitutionally impermissible to take a property right and then continue the responsibilities associated with that property right. This Court should grant this Petition and decide this issue on its merits.

CONCLUSION

For the reasons set forth herein, Petitioner requests that this Court grant his Petition and review the decision of the Colorado Supreme Court as it relates to the two issues raised.

Respectfully submitted,

/s/ _____

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APPENDIX A

SUPREME COURT, STATE OF COLORADO
CASE NO. 98 SA 456
ORIGINAL PROCEEDING IN DISCIPLINE
[Filed September 11, 2000]

In the Matter of:

ARMANDO C deBACA,

Attorney-Respondent.

Armando C de Baca is the respondent in this attorney regulation case. Having accepted an undivided 40% interest in real property of a client, as a fee, he engaged in a dishonest course of conduct to deprive the client's ex-wife of the benefit of her undivided one-half interest in the property. He misrepresented to third parties that the client was the sole owner, refused to recognize the ex-wife's bona fide interest in the property, and sought to deprive her of environmental settlement funds to which she was entitled as an owner. A hearing panel of our former grievance committee [FN1] approved the board's findings and its recommendation that the respondent be disbarred.

C de Baca excepted to the panel's action. He asserts first that the hearing board erred when it concluded that he had engaged in dishonest conduct and, second, that disbarment is too severe a sanction given prior cases. In a supplemental brief,

he alleges that, in making its findings and recommendation, the board improperly considered conduct that he engaged in after he was suspended from the practice of law, and that this violated his due process rights. We reject these contentions and conclude that disbarment is appropriate. Accordingly, we accept the panel's and board's recommendation and order that the respondent be disbarred.

I.

Armando C de Baca was admitted to practice law in Colorado in 1973. We suspended him from the practice of law, effective December 15, 1993, for ninety days, and we required him to petition for reinstatement. See People v. C de Baca 862 P.2d 273, 275 (Colo. 1993). Then, while he was still under suspension from our 1993 order, we suspended him for an additional two years for conduct occurring before or at the same time as that for which he was suspended in 1993. See People v. C de Baca, 948 P.2d 1, 4 (Colo. 1997). He has not been reinstated from either suspension and remains suspended to this day.

The current disciplinary charges all involve C de Baca's connection with certain real property located in the Globeville area of Denver (the Pearl Street property). After an evidentiary hearing at which the respondent and other witnesses testified, the hearing board made the following findings by clear and convincing evidence.

On January 29, 1981, Augustina V. Yanez quitclaimed her interest in the Pearl Street property to her then-husband Alfredo Rodriguez. Their marriage was dissolved by decree of dissolution on September 5, 1985. In the dissolution proceeding, C de Baca represented Rodriguez and Joe Clarence Medina represented Yanez. The decree included stipulated permanent orders that provided that the Pearl Street property be appraised and listed for sale, with the net proceeds of the sale to be divided

equally between Yanez and Rodriguez. The orders also provided that Yanez was entitled to the use and benefit of the property until it was sold. In exchange, Yanez was required to make the monthly mortgage and insurance payments, and pay the taxes. Yanez obtained an appraisal of the property for $13,000, but she was unable to sell it. Yanez paid the property taxes and by 1990 had paid off the mortgage.

In 1990, Rodriguez hired Ronald Mook, an Oklahoma lawyer, to defend him on criminal charges he faced in Oklahoma. Rodriguez offered the Pearl Street property to pay all or part of Mook's fee, and told Mook to contact C de Baca to verify his representations. When Mook spoke with him C de Baca told Mook that he was familiar with the Pearl Street property, that Rodriguez owned it, and that Rodriguez had the power to convey the title to the property. At no time did C de Baca tell Mook about the 1985 dissolution decree and Yanez's interest in the property. Because Rodriguez still owed C de Baca fees for his dissolution, an agreement was reached whereby Mook took a 60% interest in the Pearl Street property from Rodriguez and C de Baca took a 40% interest in the property. On September 21, 1990, Rodriguez transferred the property to Mook and C de Baca by quitclaim deed.

The residents of the Globeville area of Denver, where the Pearl Street property was located, filed a class-action lawsuit against ASARCO in the District Court for the City and County of Denver alleging that ASARCO's smelting facility contaminated real property in the area. A settlement was reached in the fall of 1993. The district court established the Globeville Claims Administration Fund (the Fund) to administer and distribute settlement funds to the real property owners in the area. C de Baca, Mook, and Yanez all applied for compensation from the Fund. The Fund denied Yanez's claim on September 30, 1993, on the basis that Rodriguez had deeded the property to C de Baca and Mook in 1990. In February 1994, the Fund paid C de Baca

and Mook $9,649.46. C de Baca and Mook received a second payment in June 1996 in the amount of $4,025.31.

In the spring of 1994, Medina contacted C de Baca on behalf of Yanez regarding the Pearl Street property. Medina asked C de Baca on what basis he was claiming an ownership interest in the property and the settlement funds in light of the 1985 dissolution decree granting Yanez a 50% interest in the net sale proceeds from the property. C de Baca told Medina that the Fund's denial of Yanez's claim was "res judicata" of any claim she might have to the property. C de Baca refused to convey either any interest in the property or any of the benefits he received from the fund to Yanez.

In September 1995 Rodrigo S. Gloria was representing Yanez. On September 13, Gloria sent a letter to C de Baca asking what his legal position was on the Pearl Street property and the settlement funds. C de Baca reasserted his ownership interest in the property on the basis of the Fund's decision. On September 21, Gloria made a demand on C de Baca to transfer his interest to Yanez and to pay her the settlement funds he had already received. When the demands were not met, Gloria filed a quiet title action atgainst C de Baca. Following a trial in July 1997, the court entered judgment against C de Baca, extinguishing his interest in the Pearl Street property, and granting that interest to Yanez, including the interest in any future distributions from the Fund.

Resolving several disputed issues of fact against C de Baca the hearing board concluded that he engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation by: accepting a 40% interest in the Pearl Street property when he knew that Yanez had an interest in the property; making affirmative misrepresentations to Mook regarding the status of the title and ownership of the property; filing a claim with the Fund asserting an interest in the settlement funds; refusing to

recognize Yanez's rights in the property and to the settlement funds despite Medina's and Gloria's demands; failing to take appropriate steps to remedy the situation in September 1993 when C de Baca claimed he "remembered" that Yanez owned an interest in the property; and finally, by his representation in the quiet title case that his right to an ownership interest in the property and the settlement funds was superior to Yanez's. This violated DR 1-102(A)(4) for conduct occurring prior to January 1, 1993, the effective date of the Rules of Professional Conduct, and Colo. RPC 8.4(c) for conduct thereafter. Without identifying the specific conduct, the board found that "[f]or the same reasons" C de Baca also violated DR 1-102(A)(5) (engaging in conduct prejudicial to the administration of justice), and DR 1-102(A)(6) (engaging in any other conduct adversely reflecting on the lawyer's fitness to practice law). The board did not specify what conduct was prejudicial to the administration of justice or adversely reflected on the fitness to practice law. We focus on the respondent's dishonest conduct that violated DR 1-102(A)(4) and Colo. RPC 8.4(c).

II.

The hearing panel approved the findings and the recommendation of the hearing board that C de Baca be disbarred. C de Baca filed exceptions to the findings and recommendation. He contends that the Rules of Professional Conduct do not apply to the conduct of a lawyer who has been suspended and must prove that he should be reinstated. He therefore asserts that the board erred in considering any conduct of his that occurred after December 15, 1993, the effective date of his suspension on unrelated charges. [FN2] C de Baca also alleges that there was insufficient evidence to support the finding that he engaged in dishonest conduct, and that the recommended sanction of disbarment is too harsh. We address these issues in turn.

A. Post-Suspension Conduct

C de Baca claims that it was error to apply the Rules of Professional Conduct to him for conduct that did not constitute the practice of law after he was suspended. We have disciplined lawyers for practicing law after an order of suspension, see, e.g., People v. Stauffer, 858 P.2d 694, 698 (Colo. 1993), and for misconduct that occurred prior to the order of suspension or disbarment, see C de Baca, 948 P.2d at 4. In this case, some of C de Baca's misconduct occurred after the December 1993 order of suspension and did not itself constitute the practice of law.

However, C de Baca's position is foreclosed by our opinion in People v. Dolan, 873 P.2d 766 (Colo. 1994). We had previously suspended the lawyer in Dolan for ninety days. See People v. Dolan, 813 P.2d 733, 736 (Colo. 1991). Subsequently, Dolan was charged with failing to comply with C.R.C.P. 241.21 regarding the actions a lawyer must take after being suspended, and with violating the former Code of Professional Responsibility, specifically DR 6-101(A)(3) (neglecting a legal matter entrusted to a lawyer), DR 7-101(A)(3) (intentionally prejudicing or damaging a client during the course of the professional relationship), and DR 1-102(A)(5) (engaging in conduct prejudicial to the administration of justice). Dolan, 873 P.2d at 767-68. In defense, Dolan took the position before the hearing board that the grievance committee did not have jurisdiction over him because the conduct specified in the complaint occurred after he was suspended. See id. at 766 n.1.

We rejected this argument, holding that "the lawyer is subject to the jurisdiction of this court and the grievance committee for misconduct committed while the lawyer is suspended." Id. We made it clear that Dolan was not being disciplined in the 1994 case for continuing to practice law after he was suspended. See id. at 769. We stated, however, that we found it "equally serious that the respondent took no steps to

protect the legal interests of [his clients] as he was required to do by C.R.C.P. 241.21, and then asserted before the district court and the grievance committee that he could take no action on [the clients'] behalf because of the order of suspension." Id. We disbarred Dolan for the misconduct he committed after being suspended. See id.

Dolan therefore stands for the proposition that a lawyer may be disciplined for engaging in conduct violating the rules of the profession even though the lawyer was suspended at the time of the misconduct. The Rules of Professional Conduct became effective on January 1, 1993, prior to C de Baca's suspension. C.R.C.P. 241.1(c), 12 C.R.S. (1998) (repealed and reenacted as C.R.C.P. 251.1) provided that "[o]n January 1, 1993, and thereafter, the conduct of lawyers licensed to practice law in the state of Colorado shall be governed by the Colorado Rules of Professional Conduct." (Emphasis added.) "Suspension is the temporary suspension by the Supreme Court of a lawyer's license to practice law in this state, subject to reinstatement as provided in C.R.C.P. 241.22(b)." C.R.C.P. 241.7(2), 12 C.R.S. (1998) (repealed and reenacted as C.R.C.P. 251.6(b)).

A lawyer who is suspended is therefore still a lawyer and is still a member of the bar. See Florida Bar v. Ross, 732 So.2d 1037, 1040 (Fla.1998). A lawyer's license to practice law is revoked when a lawyer is disbarred, however, and that person is no longer a member of the bar. See C.R.C.P. 241.22(a), 12 C.R.S. (1998) (repealed and reenacted as C.R.C.P. 251.29(a)) (specifying the exclusive means by which a disbarred lawyer may seek to be readmitted to the Bar of the State of Colorado). Because he was suspended and not disbarred, C de Baca retained his license to practice law and membership in the Colorado Bar.

Other courts that have considered this question have concluded that a suspended lawyer remains subject to the

disciplinary jurisdiction of the court for acts committed while suspended. See, e.g., Ross, 732 So.2d at 1040 (stating that although a lawyer is suspended, he is still a member of the Florida Bar, and, as such, is subject to the same ethical and professional standards as any other member of the bar and the continuing disciplinary jurisdiction of the Florida Supreme Court); In re Chavez, 129 N.M. 35, 1 P.3d 417, 422 (2000) (holding that the Rules of Professional Conduct still apply to a suspended lawyer serving as a legal assistant); In re Complaint as to the Conduct of Hereford, 306 Or. 69, 756 P.2d 30, 32 (1988) (stating that the Oregon Supreme Court possesses supervisory powers over suspended lawyers during the period of suspension and that suspended lawyers still have ethical obligations, the violation of which can lead to further sanctions). We conclude, therefore, that C de Baca remains fully answerable for violations of his ethical obligations under the Rules of Professional Conduct that were committed while he was suspended.

C de Baca also argues that he was not given notice that he would be held to ethical standards after the effective date of his suspension, December 15, 1993. Thus, he asserts that to apply the Rules of Professional Conduct to his actions after that date violates due process. We disagree. As pointed out above, C de Baca retained his license to practice law following his 1993 suspension and C.R.C.P. 241.1(c) provided that after January 1, 1993, lawyers' conduct was governed by the Rules of Professional Conduct. Moreover, C.R.C.P. 241.6, 12 C.R.S. (1998) (repealed and reenacted as C.R.C.P. 251.5) provided:

> Misconduct by a lawyer ..., including the following acts or omissions, shall constitute grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship:
> (1) Any act or omission which violates the provisions of the Code of Professional Responsibility or the Colorado Rules of Professional Conduct;

(2) Any act or omission which violates accepted rules or standards of legal ethics;
(3) Any act or omission which violates the highest standards of honesty, justice, or morality; ....
This enumeration of acts and omissions constituting grounds for discipline is not exclusive, and other acts or omissions amounting to unprofessional conduct may constitute grounds for discipline.

(Emphasis added.) This Rule placed C de Baca on notice that his conduct after the effective date of his suspension would be judged against the Rules of Professional Conduct and "the highest standards of honesty, justice, and morality."

Furthermore, the amended complaint made it explicitly clear to C de Baca and to his attorney, that he was charged, in part, with ethical violations occurring after December 15, 1993. At no point in the proceedings, through the hearing and the filing of his opening brief in this court, did C de Baca raise a problem with the notice. We conclude that C de Baca, along with other suspended lawyers, had adequate notice that he was required to conform his conduct to the ethical standards of a lawyer.

C de Baca next argues that it is unconstitutional to apply the Rules of Professional Conduct to him after the effective date of his suspension. This contention is predicated, however, on the assumption that he no longer possesses a license to practice law, a contention we have already rejected. We therefore also reject his conclusion.

Having determined that the hearing board properly considered conduct that occurred after December 15, 1993, we turn to C de Baca's remaining arguments.

B. Sufficiency of the Evidence

C de Baca claims that the evidence before the hearing board was insufficient to establish that he engaged in dishonest conduct. Specifically, he asserts that the hearing board should have given significant weight to the judge's findings in the quiet title action Yanez filed against him. In July 1997, the district court entered judgment against C de Baca, extinguishing his interest in the Pearl Street property, and granting that interest to Yanez, including the interest in any future distributions from the Fund. However, C de Baca points to the following finding:

> Although C de Baca technically converted to his own use plaintiff's share of the Globeville settlement proceeds, any damage plaintiff suffered is offset by C de Baca's expenditures to repair and improve the property. Therefore, no money damages are awarded against C de Baca for conversion.

However, this finding states that, first, C de Baca "technically converted" Yanez's settlement proceeds, implies dishonesty on C de Baca's part, and does not undercut the hearing board's findings. Second, the fact that the court awarded Yanez no money damages does not prevent either the complainant or the hearing board from reaching the conclusion that C de Baca did injure Yanez.

C de Baca also adduces evidence from the record to support his claim that he did not remember that Yanez still had an interest in the property until long after Rodriguez quitclaimed the property to Mook and him. Thus, C de Baca asserts that the evidence did not prove that he acted dishonestly. However, the evidence before the hearing board was conflicting. The hearing board weighed the evidence and the credibility of the witnesses and resolved the conflicts against C de Baca. Our standard of review of factual matters in lawyer discipline cases is well-settled. "When approved by the hearing panel, the board's factual findings are binding on this court

unless, after considering the record as a whole, the findings are unsupported by substantial evidence." People v. Bennett, 810 P.2d 661, 665 (Colo. 1991). "When, as here, it acts as fact-finder, the hearing board has the duty to assess the credibility of the evidence before it, controverted and uncontroverted." People v. Robnett, 859 P.2d 872, 877 (Colo. 1993). "In determining whether the board's findings are supported by substantial evidence, it is not within the province of this court to measure the weight of the evidence or to resolve the credibility of witnesses." People v. Distel, 759 P.1d 654, 662 (Colo. 1988). The record supports the hearing board's findings and we will not overturn them.

C. The Sanction

C de Baca argues that even if we accept the board's findings that he engaged in misconduct, disbarment is too severe a sanction. He claims that, although his history of discipline is extensive, "He has not had the opportunity to prove, after his suspension, that he recognizes the deficiencies in his practice and will change those practices given the chance."

A history of previous discipline is an aggravating factor for purposes of determining the proper level of discipline. See ABA Standards for Imposing Lawyer Sanctions 9.22(a) (1991 & Supp. 1992). C de Baca was admonished in 1979 for neglect and failure to return documents to his clients. He was admonished in 1980 for neglect, and again admonished in 1981 for neglect and for the intentional failure to act. He was admonished in 1983 for neglect, and publicly censured in 1987 for neglect and for wrongful disbursement of funds to a client, see People v. C de Baca 744 P.2d 512 (Colo. 1987). In 1990 C de Baca was once more admonished for neglect, and in 1991 he was privately censured for engaging in conduct prejudicial to the administration of justice. We suspended C de Baca in 1993 for ninety days and required that the petition for reinstatement in order to

demonstrate by clear and convincing evidence that he was once again fit to practice law. C de Baca, 862 P.2d at 275. Finally, while he remained suspended under our 1993 order, we suspended him in 1997 for an additional two years for neglecting legal matters and making misrepresentations, which occurred before or at the same time as that for which he was suspended in 1993. See C de Baca 948 P.2d at 4.

In his opening brief C. de Baca claims that the misconduct in this case all arose from his conduct prior to his 1993 suspension, and that he has not been given the chance to prove he has been rehabilitated following suspension. This is inconsistent with his argument in part II(A) above where he contended that he was being disciplined, at least in part, for conduct that occurred after he was suspended.

The hearing board found no factors in mitigation, and we conclude that it is unnecessary to list the other aggravating factors present in the case. The most important factor in this case is the prior discipline. Despite frequent opportunities for rehabilitation, C de Baca continued to engage in misconduct. Disbarment is merited under the circumstances. Accordingly, we accept the board's and panel's recommendation, and we order that C de Baca be disbarred.

III.

Armando C de Baca is hereby disbarred, effective immediately. He is further ordered to pay the costs of this proceeding in the amount of $2,163.31, within ninety days of the date this opinion is released, to the Attorney Regulation Committee, 600 Seventeenth Street, Suite 200 South, Denver, Colorado 80202-5432.

Justice MARTINEZ and Justice BENDER to not participate.

1.

By order of the supreme court dated June 30, 1998, effective January 1, 1999, the grievance committee was superseded by the reorganization of the attorney regulation system. The same order provided: "All attorney discipline cases in which trial has occurred prior to January 1, 1999 before a Hearing Board ... shall be reviewed by the applicable Hearing Panel at a final meeting to be held in 1999." Order re Reorganization of the Attorney Regulation System (Colo. June 30, 1998), reprinted in 12 C.R.S. at 605 (1999). This case was tried on June 24 and 25, 1998, and was reviewed by the hearing panel on October 10, 1998.

2.

C de Baca did not raise this argument before the hearing board or hearing panel, nor did he raise it in his exceptions or opening brief in this court. After the complainant filed an answer brief, C de Baca filed a motion for leave to raise additional issues for review, including this one. Under ordinary circumstances, the argument would be deemed to have been waived. However, because this is an issue solely of law, we granted C de Baca's motion to raise the argument in a supplemental brief.

APPENDIX B

SUPREME COURT, STATE OF COLORADO
CASE NO. 98SA456
ORIGINAL PROCEEDING IN DISCIPLINE, GC 97C-109

ORDER OF COURT

THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

vs.

ARMANDO C de BACA,

Respondent.

Upon consideration of the Petition for Rehearing filed in the above cause, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that said Petition shall be, and the same hereby is, DENIED.

BY THE COURT, OCTOBER 23, 2000.
JUSTICE MARTINEZ and JUSTICE BENDER
do not participate.